

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

|                  |                                |
|------------------|--------------------------------|
| -----X           |                                |
| BLACKROCK, INC., | :                              |
|                  | :                              |
| Plaintiff,       | : 07 Civ. 3183 (PKL)           |
|                  | :                              |
| - against -      | : ECF CASE                     |
|                  | : ELECTRONICALLY FILED         |
|                  | :                              |
| SCHRODERS PLC.   | : <u>AFFIDAVIT OF</u>          |
|                  | : <u>J. RICHARD KUSHEL IN</u>  |
| Defendant.       | : <u>OPPOSITION TO</u>         |
|                  | : <u>DEFENDANT'S MOTION TO</u> |
|                  | : <u>DISMISS</u>               |
|                  | :                              |
| -----X           |                                |

STATE OF NEW YORK                    )  
  : ss.:  
COUNTY OF NEW YORK                )

I, J. Richard Kushel, having first been duly sworn, hereby depose and say:

1. I am a member of the Management Committee of BlackRock, Inc.

("BlackRock") and co-head of BlackRock's International Account Management Group, BlackRock's international distribution and client servicing group. I have primary responsibility for BlackRock's non-U.S. institutional business. I make this affidavit based on my personal knowledge and experience in the manner in which BlackRock functions, and has functioned, since its acquisition of Merrill Lynch Investment Managers ("MLIM").

2. BlackRock is a global asset management firm headquartered in New York City with offices throughout the world. BlackRock manages, through its Portfolio Management Group, assets under its control out of several investment centers including New York City, London, Plainsboro, New Jersey and Edinburgh. The entire Portfolio Management Group,

including the Fixed Income, Equity, Liquidity, and Alternative Investment Groups is overseen by a Vice Chairman of BlackRock located in New York City.

3. Every morning of each business day, the Head of BlackRock's Portfolio Management Group hosts from its New York office, a global teleconference and videoconference meeting in which BlackRock portfolio managers and country heads are invited to attend. I too, often attend these daily meetings. Among other things, the topics discussed at these meetings include specific global investment instructions, strategic market observations using BlackRock's proprietary investment systems and methods, and confidential information regarding investment opportunities, client activities and BlackRock operations.

4. By virtue of his access to these meetings, Mr. Achim Küssner, Country Head of BlackRock's operations in Germany and Austria, became privy to this BlackRock proprietary and confidential information that was based in and disseminated from New York.

5. Mr. Küssner also made regular trips to New York for training, personnel management and business development purposes. For example, shortly after BlackRock's transaction with MLIM and Mr. Küssner's affiliation with BlackRock began, Mr. Küssner attended a BlackRock management conference and post-merger meeting in Tarrytown, New York on October 6-7, 2006. Mr. Küssner was among the select highest-ranking individuals from within the BlackRock organization invited to participate in the meeting which focused on the integration of the MLIM and BlackRock organizations, and their collective strategic operational plans going forward, including confidential marketing strategies and business plans.

6. Furthermore, Mr. Küssner participated in specific confidential teleconferences organized and led by BlackRock in New York. One such confidential teleconference attended by

Mr. Küssner, termed the “Town Hall Meeting,” was hosted from New York and London and occurred on November 6, 2006. Mr. Küssner and others attended the Town Hall Meeting and discussed the strategic organization of BlackRock’s Account Management Group (“AMG”), its global personnel, clients, assets and revenues analyzed by region, strategic client and business imperatives, including factors successfully contributing to growth and development of new business, business focuses, and planned product developments and strategic business programs.

7. On December 13-14, 2006, Mr. Küssner was back in New York attending a BlackRock Country Managers’ conference. During this conference, confidential marketing strategies and business plans were disclosed to Mr. Küssner and BlackRock’s other Country Managers, including business models and proprietary BlackRock systems, global personnel, organizational and product information, assets and revenues analyzed by region, and strategic client and marketing imperatives. One goal of disclosing BlackRock’s confidential marketing strategies and business plans with each Country Manager during this conference was to train and position each Country Manager to effectively compete with BlackRock’s global competitors.

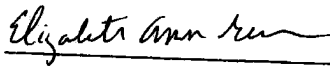
8. Mr. Küssner also came to New York to participate in a course of confidential account manager meetings held during the period of January 3 to 5, 2007. These meetings were part of the annual training for individuals within BlackRock’s AMG. One of the primary purposes of this training was for the global heads of AMG’s distribution channels to discuss confidential business plans, marketing strategies and key opportunities with senior members of AMG headquartered in New York. This annual training session was particularly important because it was the first such training since the integration of the MLIM and BlackRock organizations. Therefore, this meeting afforded senior BlackRock management in New York and the former

employees of MLIM the opportunity to discuss particular BlackRock institutional clients, various initiatives of the respective AMG teams and strategies going forward.

9. BlackRock New York executives also visit BlackRock's international offices, including Germany, and meet with the various Country Heads in charge of those offices as well as with the employees of those offices. Such meetings typically involve marketing efforts and meetings with retail and institutional clients to maintain BlackRock's goodwill and business with such clients.

  
J. Richard Kushel

Sworn to me this  
15 day of May 2007



ELIZABETH ANN GREENE  
NOTARY PUBLIC, State of New York  
No. 01GR6074039  
Qualified in Kings County  
Commission Expires: May 6, 2010

**CERTIFICATE OF SERVICE**

The undersigned, an attorney duly admitted to practice law before this Court, hereby certifies under penalty of perjury, that on May 16, 2007, I caused a true copy of the foregoing

- ***Plaintiff Blackrock, Inc.'s Memorandum of Law in Opposition to Defendant's Motion to Dismiss;***
- ***Supplemental Affirmation of Jay S. Berke in Opposition to Motion to Dismiss, dated, May 15, 2007;***
- ***Affirmation of Harris Oliner in Opposition to Defendant's Motion to Dismiss, dated May 15, 2007;***
- ***Affidavit of J. Richard Kushel in Opposition to Defendant's Motion to Dismiss, dated May 15, 2007; and***
- ***Compendium of Unreported Decisions Cited in Plaintiff Blackrock, Inc.'s Memorandum of Law in Opposition to Defendant's Motion to Dismiss***

to be served by hand delivery upon

Frederick A. Brodie, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
1540 Broadway  
New York, NY 10036

Dated: New York, New York  
May 16, 2007

  
Steven Ray Katzenstein (SK7599)